

NPDES  
ENFORCEMENT AGREEMENT  
BETWEEN THE  
U.S. ENVIRONMENTAL  
PROTECTION AGENCY, REGION VIII  
AND  
WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY

PURPOSE

The purpose of this Agreement is to provide for routine coordination and consultation on State and EPA enforcement activities. This Agreement serves to clearly define the State/Federal partnership in enforcement, as described in the following documents.

1. Guidance for the FY 1988 State/EPA Enforcement Agreements Process dated March 31, 1987.
2. Revised Policy Framework for State/EPA Enforcement Agreements dated August 25, 1986.
3. The FY 1987 National Guidance for Oversight of NPDES Programs dated April 18, 1986.

SCOPE

This Agreement establishes the routine consultation and coordination of EPA/State enforcement activities and defines the basic oversight criteria for timely and appropriate enforcement actions.

BACKGROUND

In accordance with Federal NPDES regulations, the State reviews all appropriate compliance information for all permittees and prepares and submits to EPA the Quarterly Noncompliance Report (QNCR). This document serves as one of the basic mechanisms for coordinating and overseeing activities involving major permittees. As an additional oversight procedure, EPA Region VIII reviews selected compliance information (primarily inspection reports and DMR's for major facilities) and where appropriate, provides notice to the State where significant noncompliance (SNC) is found. State response to EPA issued notices is to be reported to EPA in writing within 30 days.

## NONCOMPLIANCE CONSULTATION AND COORDINATION

EPA and State compliance staff are expected to consult and coordinate related enforcement activities on a day-to-day basis in a cooperative and professional manner, to insure the most efficient and effective State and Federal compliance actions.

Specifically, at a minimum, EPA and the State will review, each month, the status of permittees on the Quarterly Noncompliance Report (QNCR) and any outstanding Notices of Violation (NOV). If the list is of small size this discussion can take place over the telephone. If the list is lengthy, EPA and State management personnel will meet each quarter to discuss these dischargers. These meetings will be scheduled shortly after EPA's receipt and review of the State's QNCR.

Prior to the quarterly QNCR meeting and after preliminary discussions with the State, EPA will provide the State a specific agenda that will include a list of permittees to be discussed. The above discussions are expected to result in a conclusive, mutual understanding by EPA and the State of the formal actions that will be taken, within a given date by either the State or EPA, that will bring the permittee back into compliance. Such an understanding will be documented by EPA and included with the minutes of the meeting prepared by EPA.

The common goal of all parties is to cause permittees to promptly achieve and sustain compliance. There may be cases where it is impossible for EPA to agree with the State's actions to achieve this goal. In cases where agreement cannot be reached, both EPA and the State should avoid extended debate and should clearly define the actions each party intends to take. Discussion should then move to the remaining items on the agenda.

Where there are significant differences of opinion, EPA and the State should present the divergent viewpoints to their respective Division Directors immediately following the meeting. The Directors will ultimately decide the actions to be taken by their respective Divisions and, as appropriate, will confer with each other on the decisions.

## PARTICIPANTS

The lead participants will be the Chief/Director, from the appropriate Sections in the EPA and State offices. It is essential that the same individuals participate in all meetings to insure continuity in commitments made at these meetings. Other individuals may be asked to participate based upon the specific issues to be discussed at the meeting. The exact participants will be determined when the agenda is finalized.

## REPORTING

The State shall submit QNCR's to EPA by August 31, November 30, February 28, and May 31 of each year in accordance with 40 CFR 123.45. Also, the State shall submit a listing of all formal enforcement actions taken during the quarter by September 30, December 31, March 31, and June 30 of each year. These reports will cover the July-September, October-December, January-March, and April-June quarters, respectively. EPA interprets formal enforcement action to be defined as issued Notices of Violation with an Order which directs compliance, civil referrals to the State Attorney General, consent agreements filed in State court, and criminal referrals to the State Attorney General. The State shall maintain a log of all penalties assessed, as well as those collected.

## CIVIL PENALTIES

A revised penalty policy will be prepared in concert with the Enforcement Management System by the State and submitted to EPA by September 30, 1988. The revised penalty policy shall consider the economic benefit of noncompliance, the seriousness of the violations, the number of violations, the environmental harm done, and the recalcitrance of the violator. The policy shall also recognize the State's authority to exercise flexibility and to adjust the penalty based on extenuating circumstances.

## STATE CONSENT AGREEMENTS AND JUDICIAL REFERRALS

As the State proceeds with enforcement actions through the court system, it will consult with EPA concerning its intended course of action. The State, as appropriate, will provide preliminary drafts of proposed consent decrees and will allow EPA sufficient opportunity for comment.

## EPA ENFORCEMENT ACTIONS

EPA shall consult and coordinate closely with the State on all direct enforcement actions it considers in the State. EPA will consider Federal enforcement action when any of the following situations exist: the State requests EPA direct enforcement, a violation of an EPA administrative order or consent decree occurs, a legal precedent under national environmental laws is present, when necessary to ensure the viability of a national initiative (example: NMP), unresolved interstate issues are present, the State fails to address all appropriate violations, the State fails to initiate timely and appropriate enforcement action, where the State has obtained a

grossly deficient penalty or sanction under the circumstances of the violations, or where a State is not operating a portion of the NPDES permit program in lieu of EPA (example: pretreatment, Federal facilities).

When EPA takes the lead on a case and decides that an administrative penalty will be sought, EPA will consult by telephone with the State concerning its intended course of action. EPA will also provide the State a preliminary draft of the proposed penalty order for comment, and a copy of the proposed penalty order which is sent to the discharger.

#### ATTORNEY GENERAL INVOLVEMENT

It will be the responsibility of the State Environmental Agency to keep the State Attorney General informed of planned EPA direct enforcement actions.

#### FEDERAL FACILITIES

Federal facilities will be treated under this agreement in the same manner as non-federal permittees. EPA will be notified of State enforcement actions on Federal Facilities. In the Spring of each year the Federal Facilities Coordinator will send to the State the A-106 listing of Federal facility pollution control projects for review and comment. The State will be asked to identify missing necessary water pollution control projects.

#### WIND RIVER INDIAN RESERVATION

EPA shall have primary enforcement responsibility for NPDES Permits issued to facilities located on the Wind River Indian Reservation. The State of Wyoming shall retain responsibility for reviewing the DMRs from such facilities and the State will monitor the discharges as resources allow.

If the State documents an NPDES violation, the State shall provide EPA with documentation of the violation. Within thirty (30) days of notification of the violation, the EPA shall take appropriate enforcement action and provide DEQ with a copy of the action, or if EPA decides not to take enforcement action, it shall provide the State with a written explanation of its reason(s) for not taking action.

#### PRETREATMENT

Until the delegation of the pretreatment program authority to the State occurs, EPA will remain primarily responsible for enforcement activities regarding pretreatment. The State is encouraged to conduct pretreatment inspections and to provide EPA

any information it finds regarding pretreatment violations. Once delegation is granted the State shall be responsible for pretreatment actions to the same degree and extent as any other NPDES violation.

#### OVERSIGHT CRITERIA

To implement the above cited EPA policy and guidance, the following enforcement response guidelines will be followed:

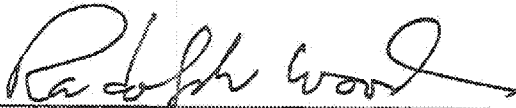
##### A. Timeliness

1. The State will evaluate instances of noncompliance by major permittees and P.L. 92-500 minor permittees within 30 days from the identification of a violation; determine the appropriate response, and document any action taken/not taken (including the technical reason).
2. In the case of major permittees, the State is expected to have already initiated an enforcement action to achieve compliance by the time the permittee appears on the QNCR.
3. Prior to a permittee appearing on the subsequent QNCR for the same violation, the permittee should either be in compliance or the State should have taken formal action to achieve final compliance.

##### B. Appropriateness

1. Formal enforcement action should be the response to significant noncompliance listed on a QNCR.
2. A judicial referral should be utilized where:
  - a. An administrative order has been violated.
  - b. The violation must be stopped immediately.
  - c. Long term compliance must be compelled.
  - d. A substantial economic benefit has been obtained from acts of noncompliance.
  - e. A deterrent is needed to prevent others from similarly violating the law.
3. A monetary penalty should be sought in each judicial referral or consent agreement.

4. The size of the penalty to be obtained shall be reviewed by EPA, in light of, and commensurate with, one calculated using EPA's Clean Water Act Civil Penalty Policy.



Randolph Wood, Director  
Department of Environmental  
Quality



James J. Scherer  
Regional Administrator  
U.S. Environmental Protection  
Agency, Region VIII